

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - DETROIT**

**IN THE MATTER OF:**

MARK MILLER,

Debtor.

7133 Shenandoah Ave.  
Allen park, MI 48101  
XXX-XX-9757

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Case No. 18-56758-TJT

Honorable THOMAS J. TUCKER

Chapter 7

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY**  
**ON BEHALF OF YAMAHA MOTOR FINANCE AND WAIVING FED.R.BANKR.P. 4001(A) (3)**

**NOW COMES** Creditor, Yamaha Motor Finance, (“Movant”) by and through counsel, KILPATRICK & ASSOCIATES, P.C., and in support of this Motion, states as follows:

1. On or about December 14, 2018, the Debtor (“Debtor” as used herein shall include both Debtors in a joint case) filed a Voluntary Petition under Chapter 7 of Title 11; the U.S. Bankruptcy Code.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(a) and (b), and 28 U.S.C. § 1334.

3. Movant brings this Motion pursuant to 11 U.S.C. § 105; § 362; § 363; Fed.R.Bankr.P. 4001(a), L.B.R. 4001-1 (E.D.M.) and L.B.R. L.B.R. 9014-1 (E.D.M.).

4. On the date of the filing of this case, the Debtor was indebted to Movant relating to the purchase of a 2015 Polaris Sportsman 570 (VIN: 4XASEA571FA634787) (the “Vehicle”).

5. The Vehicle listed above was purchased on a Retail Installment Sale Contract (the “Contract”). Movant perfected its security interest in the Vehicle; a copy of the Contract and proof of perfection are attached hereto and hereby incorporated by reference. The following is a history and indication of the current status of the account:

**2015 Polaris Sportsman 570**

Account No.: 0290

Monthly Payments: \$160.00

Claim: \$5,484.45 + 16.99% interest per annum

6. To the best of Movant’s knowledge and belief and after reasonable inquiry, no other parties have an interest in the Vehicle.

7. The approximate value of the Vehicle is \$4,230.00 based on the NADA Official Used Car Guide.

8. Pursuant to L.B.R. 9013(c) (1) (b), attached is a copy of the proposed Order Granting Relief from the Automatic Stay marked as Exhibit "A".

9. The Debtor is currently past due on the Contract with Movant in the amount of \$586.00 resulting from the Debtor's failure to pay the December 2018 payment and the payments due thereafter.

10. The Debtor's continued use of the Vehicle subject to Movant's security interest, without rendering payment to Movant, constitutes "cause" for Relief from the Automatic Stay under 11 U.S.C. § 362(d) (1).

11. The Debtor has filed a Chapter 7 case and therefore, no reorganization is contemplated.

12. The approximate market value of the Vehicle is \$4,230.00 which is less than the amount owed on the Vehicle; therefore the Debtor has no equity in the Vehicle and Movant is entitled to relief from the Automatic Stay pursuant to 11 U.S.C. 362(d) (2).

13. Counsel for Movant sought concurrence for the relief sought in this motion from opposing counsel on April 4, 2019; however, consent was not obtained.

14. After the stay is terminated, the Debtor will have minimal motivation to insure, preserve, or repair the Vehicle, and therefore Movant requests that the Court waive the stay of the order terminating the stay under Fed.R.Bankr.P. 4001(a) (3) so that Movant may proceed to take possession of the Vehicle.

**WHEREFORE**, Creditor, Yamaha Motor Finance, prays that the Court issue an Order for Movant for relief from the Automatic Stay, with respect to the Vehicle described above and grant such further, other, and different relief the Court deems just and proper.

Respectfully submitted;  
KILPATRICK & ASSOCIATES, P.C.

By: /s/ RICHARDO I. KILPATRICK  
RICHARDO I. KILPATRICK, ESQ. (P35275)  
Attorney for Yamaha Motor Finance  
903 N. Opdyke Road, Suite C  
Auburn Hills, MI 48326  
ecf@kaalaw.com  
(248) 377-0700

Dated: April 10, 2019

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Case No. 18-56758-TJT  
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**ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
ON BEHALF OF YAMAHA MOTOR FINANCE AND WAIVING FED.R.BANKR.P. 4001(A) (3)**

This matter having come before the Court on Yamaha Motor Finance ("Movant") Motion to Vacate the Automatic Stay, filed by and through its Counsel, KILPATRICK & ASSOCIATES, P.C.; all parties in interest having been served a copy of the Motion, proposed Order Vacating Stay, Notice of the Motion and Proof of Service; no objection to the Motion having been filed, or if filed same having been overruled or withdrawn; Movant being the lienholder on a 2015 Polaris Sportsman 570 (VIN: 4XASEA571FA634787) (Acct. No.: 0290) (the "Vehicle"); Movant having a claim in the amount of \$5,484.45; the Vehicle having an approximate value of \$4,230.00 no other party having an interest in the Vehicle; and the Court being otherwise fully advised in the premises;

**IT IS HEREBY ORDERED** that the Automatic Stay as provided by 11 U.S.C. § 362, is hereby vacated as it applies to the Movant with respect to the Vehicle.

**IT IS FURTHER ORDERED** that the Stay as provided under Fed.R.Bankr.P. 4001(a) (3), shall not apply in this case.

**IT IS FURTHER ORDERED** that if any funds are received over and above the balance, interest, attorney fees, cost of recovery and liquidation will be turned over to the Trustee for the benefit of the estate.

**EXHIBIT "A"**

**UNITED STATES BANKRUPTCY COURT  
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Case No. 18-56758-TJT  
Honorable THOMAS J. TUCKER  
Chapter 7

**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY**  
**ON BEHALF OF YAMAHA MOTOR FINANCE AND WAIVING FED.R.BANKR.P. 4001(A) (3)**

Creditor, Yamaha Motor Finance, has filed papers with the Court for Relief from the Automatic Stay.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the Court to grant the Motion, or if you want the Court to consider your views on the Motion, within fourteen (14) days, you or your attorney must:

1. File with the Court a written response or an answer, explaining your position at<sup>1</sup>:

United States Bankruptcy Court,  
211 West Fort Street,  
Detroit, Michigan 48226.

If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

Richardo I. Kilpatrick, Attorney for Creditor, Yamaha Motor Finance, Kilpatrick & Associates, P.C., 903 North Opdyke Road, Suite C, Auburn Hills, Michigan 48326;

Office of the U.S. Trustee, 211 West Fort Street, Suite 700, Detroit, Michigan 48226;

Karen E. Evangelista, Chapter 7 Trustee, 410 W University, Ste 225, Rochester, MI 48307;

Mark Miller, Debtor, 7133 Shenandoah Ave., , Allen park, MI 48101; and

William C. Babut, Attorney for Debtor, William C. Babut, P.C., 700 Towner Street, Ypsilanti, MI 48198.

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the Motion and you will be served with a notice of the date, time and location of the hearing.

**If you or your attorney do not take these steps, the Court may decide that you do not oppose the Relief sought in the Motion and may enter an order granting that Relief.**

Respectfully submitted;  
KILPATRICK & ASSOCIATES, P.C.

By: /s/ RICHARDO I. KILPATRICK  
RICHARDO I. KILPATRICK, ESQ. (P35275)  
Attorney for Yamaha Motor Finance  
903 N. Opdyke Road, Suite C  
Auburn Hills, MI 48326  
ecf@kaalaw.com  
(248) 377-0700

Dated: April 10, 2019

<sup>1</sup> Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e)

**UNITED STATES BANKRUPTCY COURT  
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**PROOF OF SERVICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
ON BEHALF OF YAMAHA MOTOR FINANCE AND WAIVING FED.R.BANKR.P. 4001(A) (3)**

**KELISHA SMITH** certifies that on the 10<sup>th</sup> day of April, 2019, she served a copy of the MOTION FOR RELIEF FROM THE AUTOMATIC STAY ON BEHALF OF YAMAHA MOTOR FINANCE AND WAIVING FED.R.BANKR.P. 4001(A) (3), PROPOSED ORDER, NOTICE OF MOTION FOR RELIEF FROM STAY and PROOF OF SERVICE, in the above-captioned matter, with the Clerk of the Court using the ECF system which will send notification of such filing upon the following:

William C. Babut: wbabut@babutlaw.com

Karen E. Evangelista: kevangelistalaw@gmail.com

Office of the U.S. Trustee: via ECF e-mail

And by depositing same in a United States postal box located in Auburn Hills, Michigan, with the lawful amount of postage fully prepaid thereon, upon the following:

Mark Miller  
7133 Shenandoah Ave.  
Allen park, MI 48101

/S/ Kelisha Smith  
**KELISHA SMITH**, an employee of  
KILPATRICK & ASSOCIATES, P.C.  
903 North Opdyke Road, Suite C  
Auburn Hills, Michigan 48326  
ecf@kaalaw.com  
(248) 377 - 0700